2004-2005

City of Des Moines/Des Moines Police Bargaining Unit Assn.

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BEFORE THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of Fact-finding between	)	
	)	**January 17, 2005**
THE CITY OF DES MOINES, IOWA	)	
	)	**Marvin Hill, Jr.**
Employer	)	**Neutral**
	)	
and	)	
	)	
DES MOINES POLICE BARGAINING UNIT ASSOCIATION	)	**Hearing date: January 7, 2005**
	)	**Des Moines, IA**
Union.	)	
	)	

APPEARANCES

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The City. By way of background, the City of Des Moines, Iowa, is the political, economic and cultural capital of the State of Iowa. The City is the center of insurance, printing, finance, retail and wholesale trades, as well as industry, providing a diverse economic base. Des Moines has a population of approximately 200,000 and occupies 78 square miles Surrounded by rapidly-growing

communities, the core-based statistical area has a population of over 500,000, extending into five contiguous counties

The City operates under the council-manager-ward form of government. The City Council consists of a mayor elected at large, two council members elected at large and once council member elected from each of the four wards as established for terms of four years. The mayor is the chief executive officer and representative of city government. The city manager is responsible for a large, varied, multiple-purpose municipal organization representing a workforce of approximately 1,950 employees and an annual general fund-operating budget of 137 million.

The Union. The Des Moines Police Bargaining Association represents approximately 280 law enforcement officers. The police force has been unionized for decades. As such, the parties have a long bargaining history.

By way of history, for years the bargaining unit received approximately 3.0%/year wage increases (See, City Ex. 1, *infra* this opinion at 8-9) In 1999, the Police and the City entered into a three-year collective bargaining agreement providing increases of 3.0%/year.

Until the most recent collective bargaining agreement, the Police unit was not the highest paid police force in Iowa. Except for the last five (5) years, the City's Police unit has always trailed Davenport or other eastern Iowa cities in a comparison of wages and benefits In an attempt to rectify this trend, the City of Des Moines elected to provide the Police unit with pay increases far above the market average, allowing the bargaining unit to far outpace inflation during the last five years. In fact, the Des Moines Police are now the highest paid in the State of Iowa. The Administration asserts that acceptance of its proposal of 2.0% will not change this fact. As demonstrated by the evidence record, the bargaining unit will still be the highest paid in the State with a 2.0% wage increase (See, *Brief for the Employer* at 3). The Union, citing the testimony of its expert witness, Professor Wayne Newkirk, believes 4.0% is the appropriate allocation for the successor collective bargaining agreement (*Brief for the Union* at 2-3).

The Hearing. Unable to reach an accord on a successor one-year labor agreement, the parties submitted the impasse to the undersigned Arbitrator in a fact-finding proceeding On January 7, 2005, the parties appeared through its representatives (cited above) and entered exhibits and testimony. The record was closed at the conclusion of the hearing.

II. ISSUES FOR RESOLUTION

The Union has proposed a one-year contract with a 4.0% base salary increase to include corresponding longevity increases with no other changes in the collective bargaining agreement other than items that have been previously agreed upon and accepted as agreed. These agreed-upon changes include: (1) Article II (Non-Discrimination); (2) Article IX (Settlement of Disputes), Section B; (3) Article XVII (Payroll Deductions), and (4) Article XX (Seniority)(*Brief for the Union* at 3)

The City has proposed a 2.0% wage increase with changes in the parties' collective bargaining agreement. These changes include, for the first time, bargaining-unit members seeking family coverage for insurance pay a portion of the premium and the removal of contract language. Other changes include Article VI (Work Rules), and Article VI (Performance Appraisals), Section D (Restrictions). The Administration advances the argument that both provisions are permissive under the Act and, as such, the fact-finder is without jurisdiction to recommend any changes. The Union asserts that the fact-finder is with jurisdiction to make recommendations absent a stay from PERB.

III. ANALYSIS AND DISCUSSION

A. The Statute

The Iowa Code does not outline the criteria upon which a fact-finder is to rely in drafting recommendations. However, Section 2 22 (9) (Binding Arbitration) lists the following criteria for interest arbitrators to apply:

> 9. The panel of Arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts
>
> b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved
>
> c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services
>
> d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations

It is acknowledged by all interested parties, as well as the Iowa PERB, that the above criteria should be applied by a fact-finder when making a recommendation for a successor collective bargaining agreement.

* * * *

B. Background: Focus of the Interest Neutral in Formulating Recommendations and/or Interest Awards

What should be the focus of the interest neutral when formulating a fact-finding or arbitration award? Should the award reflect the evidence-record facts or should it reflect the position the parties would have reached had they been permitted to engage in economic warfare? Likewise, where fact-finding is mandated, should the fact-finder issue recommendations that will settle the dispute (i e., a recommendation that both sides can live with and avoid arbitration) or, alternatively, should recommendations be drafted based only on the so-called hard facts (assuming, of course, that there are hard facts to be found)?

Where both parties have come to the bargaining and arbitration table with extreme positions, one arbitrator found that the proper focus is to formulate an award based on "a position which both parties would have come to had they been able to reach an agreement themselves."[1] In another case, the arbitrator rejected the fact-finder's "recommendations based on compromise in an attempt to gain the parties' support for an intermediate solution "[2] In the arbitrator's words, "this is a legitimate strategy for a Fact Finder, but not for an Arbitrator."[3] R Theodore Clark of Seyfarth Shaw, Chicago, Illinois, has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike.[4]

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[1] *County of Blue Earth v. Law Enforcement Labor Serv., Inc.*, 90 LA 718, 719 (1988) (Rutrick, Arb); *see also* 60 *City of Clinton v Clinton Firefighters Ass'n, Local 9*, 72 LA 190 (1979) (Winton, Arb.) (the fact-finder declared "consideration was given to what the parties might have agreed to if negotiations had continued to a conclusion. In the final analysis, however, the Fact Finder must recommend what he considers to be RIGHT in this City at this time . . ." *Id* at 196).

[2] *City of Blaine v. Minnesota Teamsters Union, Local 320*, 70 LA 549, 557 (1988) (Perretti, Arb.)

[3] *Id.*

[4] R T. Clark, Jr., Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process: II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.L. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take the strike." *Id.*

See also Des Moines Transit Co. v. Amalgamated Ass'n of Am., Div., 441, 38 LA 666 (1962) (Flagler, Arb.) "It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table " *Id.* at 671.

Arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result."[5] **While I do not advocate that interest neutrals issue decisions that surprise both parties (i.e., decisions outside the "range of expectations" or "outliers"), there is something to be said for attempting to determine whether the parties would have found themselves with the strike weapon at their disposal.** At times this would favor a large union and at other times the employer **The job of an interest neutral, however, is not to equalize bargaining power, or to do "what is right" or act like a "circuit rider," dispensing his own notion of economic justice but, rather, to render an award applying the statutory criteria. At the same time, if the process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining."**[6] In this regard Arbitrator Harvey Nathan, in a 1988 arbitration under the Illinois statute, outlined the better view of an arbitrator's function as follows:

> [I]nterest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to Nor is it the function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to [the] parties' particular bargaining history. **The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves.** To do anything less would inhibit collective bargaining [7]

C. Relevance of Internal vs. External Comparisons

Both parties have advanced arguments with respect to internal and external criteria, with the Administration asserting that internal comparisons should be given more weight than external comparisons. (See, *Brief for the Employer* at 5-7) How significant is internal and external

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[5] See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion, in* Arbitration–1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators (B D. Dennis & G.C. Somers, etd) 159, 186 (BNA Books, 1976).

[6] *Arizona Pub. Serv. Co. v. Int'l Bhd. of Elec. Workers, Local 387*, 63 LA 1189, 1196 (1974) (Platt, Arb.).

[7] *Will County Bd. and Sheriff of Will County v. AFSCME Council 31, Local 2961*, Illinois State Labor Relations Board, (Nathan, Chair., Aug. 17, 1988) (unpublished).

See generally, Hill, Sinicropi and Evenson, Winning Arbitration Advocacy (BNA Books, 1998)(Chapter 9)(discussing the focus of the interest neutral)

comparability as criteria in interest proceedings? In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that "the factor of internal comparability alone required selection of the Village's insurance proposal." Arbitrator Goldstein stressed that arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits." Similarly, in *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996)(unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such a health insurance, it "takes very compelling evidence" in the form of external comparisons to justify a deviation from that past practice.

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result), Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v International Association of Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

> Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison " As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself " **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.** *Id.* at 791 (citations omitted; emphasis mine)

* * * *

Other considerations equal, I agree with those arbitrators who, with rare exceptions, find internal comparability equally or more compelling than external data. To this end, I find merit in the City's positions that internal comparisons are more relevant in this case than reference to external comparisons, especially where (1) Des Moines is the largest city in Iowa (*Brief for the Employer* at 5) and (2) the employees in this unit are in a unique classification, i.e., the only employees authorized to use deadly force in dealings with the public

D. Comparative Bench-Mark Jurisdictions

The Union submits that the cities with whom it should be compared include Davenport, Bettendorf, and Waterloo, since these have the highest wage rates in Iowa. (*Brief for the Union* at 6).

The Administration has compiled wage and insurance information for the cities of (1) Davenport, (2) Cedar Rapids, (3) Sioux City, and (4) Waterloo, Iowa. The City also elected to include (5) Bettendorf in its comparisons because the Police unit and its expert witness chose to rely

on Bettendorf as a comparable (*Brief for the City* at 7). While the Administration takes issue with Bettendorf as a comparable because of its small size, because the City stacks up well against Bettendorf it has decided to include it in its comparables *Id* at 7.

For purposes of this proceeding the City's list of comparables is selected. Relative to this grouping of comparables, the Des Moines Police Department is the highest paid police unit in the State of Iowa Moreover, that position would be maintained even if there were no increase in wages included in the successor collective bargaining agreement (See, City Exhibits 3-6)(more on this later).

E. Substantive Issues

For the following reasons, my recommendation, based on this specific evidence record and the statutory criteria, is that the police bargaining unit receive an increase of 3.0%. Further I recommend that their be no change in the insurance provision for the one-year successor collective bargaining agreement. I also recommend no change in the two items the City asserts are permissive.

1. Wage Proposals

In its *Brief* at 9, the Administration advances a compelling argument regarding the relevance of internal comparables. In relevant part, the Employer's argument is as follows:

> In a case such as this where an employer deals with six separate unions, internal comparability is of paramount importance. From the standpoint of both substance and appearance, it is in the public employer's interest to treat its various groups of employees in a similar fashion. Likewise, it is equally important for bargaining unit representatives to maintain their relative wage and benefits *vis-a-vis* brethren unions More importantly, however, it is obvious that the Iowa Legislature intended third-party neutrals to look first to internal comparability when searching for guidance and making decisions regarding interest arbitration. Indeed, there is no more "similar" public employee than one which is working for the same employers, but represented by a different union.

To this end, the most compelling exhibit is *City Exhibit 1*, titled "Contract Settlements Between the City of Des Moines and its Bargaining Units 1997 through 2005." In relevant part that exhibit provides:

Year	CIPEC	MEA	Fire	Police	AFSCME	Library Clerks IAMAW	Library Professionals IAMAW
unit size (approximate)	600	340	286	270	50	25-30	25-30
7/1/97	3 0%	3 0%	3.0%	3.0%	3.0%	3 0%	N/A
7/1/98	3.0%	3 0%	3.0%	3.0%	3.0%	3.0%	2.9%
7/1/99	3 0%	3.0%	3.0%	3 0%	3 0%	3.0%	3.0%
7/1/00	3.0%	3.0%	3.0%	3.0%	3.0%	3.25%	3.0%
7/1/01	3 0%	3.0%	6.0%*	4.0% *	3.0%	3.25%	3.0%
7/1/02	3.0%	3.0%	6.0%*	4 5%*	3.0%	3.25%	3.0%
7/1/03	3.0%	3.0%	6.4%*	5.0%*	3.0%	3.25%	3.0%
7/1/04	3.0%	3.0%	6.5%*	6.0%*	2.0% July '04 1.5% January '05	3.00%	3 0%
7/1/05	3 0%	Open	Open Bargaining	Open	1.5%	3 0%	3.0%

Notes:

CIPEC	Contract for 3 years in 1997 and 6 years in 2000
MEA	Contract for 3 years in 1997, 3 years in 2000, 2years in '04
FIRE	Contract for 3 years in 1997 and 5 years in 2000
POLICE	Contract for 3 years in 1997 and 5 years in 2000
AFSCME	Contract for 3 years in 1997, 4 years in 2000, 2 years in '04
Library Clerks	Contract for 3 years in 1997, 4 years in 2000, 2 years in '04
Library Prof.	Contract for 3 years in 1997, 4 years in 2000, 2 years in '04

* Reflects an emphasis, starting in 2000, to increase the pay of both the police and fire units (See, testimony of Tom Turner, R. 12)

As can be seen from the above exhibit, relative to the other units, Police and Fire have led the way in wage increases, averaging 5.0% and 6.3%, respectively, for the past three years. Undoubtably, this was due to the commitment by the City to make the protective services the highest paid in the State. It succeeded.

Of secondary importance is the record of *recent settlements* of the comparative bench-mark groups. In relevant part, the data indicate the following trends:

Year	Des Moines	Davenport	Cedar Rapids	Sioux City	Waterloo	Bettendorf
7/1/97	3.0%	NA	NA	NA	NA	NA
7/1/98	3 0%	NA	NA	NA	NA	NA
7/1/99	3.0%	NA	NA	NA	NA	NA
7/1/00	5 5%	NA	NA	NA	NA	NA
7/1/01	4.0%	NA	2.0%	NA	NA	NA
1/1/02	NA	NA	2.0%	NA	NA	NA
7/1/02	4.5%	NA	2 0%	NA	2 0%	NA
1/1/03	NA	NA	2.5%	NA	2.0%	NA
7/1/03	5.0%	4 0%	1 75%	NA	3.5%	2.5%
1/1/04	NA	NA	2.5%	2.25%	NA	NA
1/1/05	NA	NA	NA	2.25%	3 5%	3.%
7/1/05	OPEN	3.0%	2.7%	2.25%	3.5%	3.5%
1/1/06	NA	NA	NA	2.25%	NA	NA

[Er Ex. 2].

Finally, on a per-hour basis, the Police unit, at over $27.00/hour, is the highest paid in the City (City Ex. 4), thus favoring an allocation less than that requested by the Union

Consideration of internal and external comparables, and of the other statutory factors, indicates that the settlement point in this case is not 2.0%, nor is it 4.0%. Indeed, when taken into consideration with their wage proposal, the City's total economic package, with the give-back in family health insurance, is approximately 1.5% (See, *Brief for the Union* at 7-8, citing Ex. 8 at 42). The successor collective bargaining agreement should reflect a 3.0% increase, *the point I determine the parties would have reached had they not resorted to statutory impasse procedures.*

As indicated, this bargaining unit is already at a position of primacy or "first among comparables." In addition, market considerations warrant an increase less than 4.0% but more than a mere 2.0%. Aside from Fire, every other unit in Des Moines is at 3.0%. Clearly, 2.0% is not the appropriate allocation for the successor contract. Four percent (4.0%) would advance the unit to a greater level than market forces otherwise would warrant, *especially under the present insurance allocation*, an allocation that is not going to be upset in this proceeding.

Further supporting my recommendation is this: Members of the so-called "blue-collar" unit (CEPAC), one of the largest units in the City, do not make contributions toward health insurance *and*, more important, will receive a 3.0% raise in 2004-05. This internal comparability factor is significant.

I also note that the City has not asserted an inability-to-pay argument. Moreover, there is some indication that the City can tap other resources to fund the proposal I recommend. (See, *Brief for the Union* at 8, citing Exhibits 23, 25 & 26).

There is an additional consideration that favors a 3.0% increase, rather than the Union's 4.0% proposal. As testified to by Human Resource Director Tom Turner, a minimum requirement for a police officer in Des Moines is 15 hours of college credit. As noted by Mr. Turner:

> What's interesting about that is the 15 hours of college with 15 years of service automatically allows an employee, police officer, to become a senior police officer in what's called a noncompetitive civil service examination. **Upon attainment of that tenure, and with that number of hours of college, they are then moved to a senior police officer classification and the corresponding higher pay.**

Mr. Turner continued:

> The other thing I've done is just add what the cumulative wage should be for an individual that's progressed forward through these 26 years; and that, you'll notice, is the bottom line. **And you'll notice the bold number $1,392,310 is the cumulative pay available to an officer at the City of Des Moines over a 26-year career, which is higher than any of the cumulative pay available to any officers in any of the other five cities over the same period of time.**

Clearly, an examination of cumulative pay data suggests that the number is indeed 3 0%, not 2.0% (City) or 4 0% (Union). A 4.0% allocation puts the cumulative number at $1,480,000, while 2.0% results in a cumulative amount of $1,420,000. The next highest bench-mark, Davenport, is at $1,384,000, according to Mr. Turner. The evidence record supports a 3.0% allocation.

For the above reasons, I hold that the one-year successor labor agreement should include a wage increase of 3.0%

2. Insurance

The Administration proposes a co-called "break-through item" or significant change in the existing benefit scheme, namely, that the successor collective bargaining agreement contain, for the first time, a premium-sharing provision for employees who elect family coverage. The proposal, by all accounts, is modest (See, *Health Plan Exhibit* 1): the employee still pays nothing towards the cost of the premium for single coverage, but will pay $28 52/month for family coverage (28 52 represents approximately 5 0% of the difference between the family and single premium)

There is no question that the City has one of the most generous health insurance programs both in the State of Iowa and, also, relative to other large cities in America, the LEXUS of plans. (See, City Ex. 7) There is also no serious dispute that with insurance costs increasing at exponential rates, private and public sector employers are seeking to shift some of the burden to employees. Gone are the days where employers pay the "full boat" of insurance costs. In this respect, the Union is on its last legs of holding on to an employer-pay-all insurance provision, at least when external data is considered

Still, the Administration, as the moving party, has the burden to plead and prove that sufficient justification exists for an interest arbitrator/fact-finder to award (recommend) a "breakthrough" item such as its proposal in this case, especially when the Union demonstrated that it gave up concessions to the Employer to maintain this benefit. See, City of DeKalb (Goldstein, June 9, 1988) (where the Arbitrator stated: "[i]nterest arbitration . . is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria."); Village of Arlington Heights and IAFF (Briggs, January 29, 1991)("Interest arbitration is artificial. It is a substitute for the real thing - a voluntary settlement between the parties themselves through the collective bargaining process. **Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves.** It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. . . It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . the party wishing to change the status quo must

present compelling reasons to do so." (Emphasis added)); Will County and MAP, Chapter 123 (McAlpin, October, 1998)("When one side wished to deviate from the status quo . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.").

Arbitrator Elliot Goldstein explained what the proponent of a breakthrough change must show as follows:

> In order to obtain a change in interest arbitration, the party seeking the change must at minimum prove:
>
> > (1) that the old system or procedure has not worked as anticipated when originally agreed to;
> >
> > (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
> >
> > (3) that the party seeking the change must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

While the Administration has demonstrated that when compared to other cities, its proposal is more reasonable than the Union's *status quo* position, I am convinced that, as of the hearing date, the parties have not explored alternate ways of dealing with the insurance-cost problem in collective bargaining. What is before me is a one-year collective bargaining agreement, short in duration by any consideration. **With some hesitation, I am not recommending any change in the current program.** Of significance in this decision is the fact that in prior bargaining the Union has apparently given up some benefits to which it otherwise would have achieved but for the present insurance allocation. Accordingly, I am reluctant to recommend a change when one party "paid for" the current allocation in prior bargaining. As I have said in a prior case:

> **A neutral should keep in mind that, at one time a party may have "paid dearly" for a particular item and, thus, should proceed with caution before drafting an award that would upset the "quid pro quo."** In this respect, the parties' bargaining history may be particularly important in formulating fact-finding recommendations or interest awards. For example, a party desiring an insurance package where the employer pays the full cost of coverage, with no employee deductible, may elect to take a relatively small salary increase in return for such a package. In a fact-finding proceeding the following year, it is argued that the employees have fallen behind and, thus a substantial salary adjustment must be granted to remove this inequity.

> After posing the above question, my argument is that arbitrators and factfinders must take into account the prior bargaining that led up to the current contract, otherwise irreparable damages may be done to the parties' collective bargaining relationship. Simply stated, concessions made in good faith at the bargaining table should not be used as a starting base to gain additional contract concessions from a neutral. Both labor and management should fear neutrals that do not take into account the "deals that are cut" in prior negotiations. What was gained at bargaining should not be lost the following year by arbitral fiat Nothing can be more detrimental to good faith negotiations.

Bettendorf Community School District and Bettendorf Education Association (February 2, 1991)(unpublished)(emphasis mine).

Having said that, the Union is fighting an uphill battle in holding on to an allocation system that, in all but a few jurisdictions, has seen better days. I did not invent it, nor did I impose it, but the trend in labor relations is a sharing of premium allocations for insurance Sooner or later, the Union will have to revise its expectations The change requested by the City is modest, fundamental and almost uniform in other jurisdictions. Indeed, the library clerks and library professionals accepted the City's SPM health plan, and agreed to the same contribution that's requested by the City and, thus, that unit received a 3.0% increase. AFSCME, whose increases have ranged in the 3.0% area, has a 1½% increase coming in July of 2005 because they did not agree to a contribution towards health care

Favoring the City's position for some employee contribution are the externals (City Ex. 7). Davenport, Waterloo, and Cedar Rapids' plans all have contributions/deductibles (City Ex. 7; R. 15-16) While Sioux City deleted their contribution, in exchange a three-tiered drug plan was implemented They also implemented other co-pays, like emergency room visits (R. 16).

Where does this leave the parties? As I have said, with some hesitation, but in light of the parties' bargaining history, I recommend that the one-year successor collective bargaining agreement contain the present insurance provision. In this specific case the parties' bargaining history trumps the external comparables, at least for one year.

3. <u>Other Issues: Article VI, Work Rules & Article XI, Performance Appriasals, Section D, Restrictions</u>

There are currently two legal matters before the Iowa Public Employment Relations Board To this end the Administration requests that two permissive provisions be removed from the successor collective bargaining agreement. As such, it argues that the fact-finder is without jurisdiction to make any recommendations with respect to these matters, other than to agree with the City. It matters not, in the view of the City, that the items may, at one time, been in the collective bargaining agreement. (See, *Brief for the Employer* at 10-11).

The Union's position is that, pursuant to Iowa Administrative Code, Section 6.3(2), the parties must still present evidence on all issues to the fact-finder which is the subject to the negotiability dispute and the neutral is to rule on the issues submitted, including the issues that are subject to the negotiability dispute unless explicitly stayed by the Board (*Brief for the Union* at 9).

The Union advances the better case. I recommend that no changes be made to the items at issue. I find no evidence that the present language has caused the parties problems or has otherwise been a burden to the Administration.

V. FACTFINDING RECOMMENDATIONS: SUMMARY

A. Wages. The successor collective bargaining agreement should include an across-the-board increase of 3.0%.

B. Insurance. The parties' collective bargaining agreement should retain the present insurance coverage, but for one year only.

C. Other Issues Current contract language.

Respectfully submitted, and
dated this 17th day of January,
2005, DeKalb, IL.

Marvin F Hill, Jr.,
Arbitrator

I certify that on I served the foregoing fact-finding report upon each on the parties' representatives by personally mailing a copy to them at their respective addresses noted in the Appearance section of this award. I further certify that on, I personally mailed a copy to Sue Bolte of the Iowa Public Employment Relations Board (PERB), 510 East 12th Street, Ste 1B, Des Moines, IA, 50319

Marvin F Hill, Jr.
Fact-finder/Arbitrator